material to justify the rates.[98] After 12 months, costs and rates would be reviewed for inclusion in the proper basket and category, based on actual operating results.

73. Comments. Parties filed comments both on the issue of whether services are eligible for streamlined treatments and on the issue of what review applies at the next biennial filing. With respect to the first issue, most parties support streamlined tariff treatment of new services.[99] With respect to the definition of de minimis, USTA argues that the test for de minimis should include new services with projected revenues that meet either the 2 percent test or that will be less than $200,000 in aggregate on an annual basis. USTA asserts that the latter criterion will facilitate the introduction of new services by very small companies for whom the 2 percent standard alone would yield an unreasonably low threshold.[100]

74. Various commenters also seek to modify the requirement that the new service can be priced no higher than the price of a like service offered by the geographically closest price cap LEC. USTA suggests the price be no higher than any price cap LEC in the country.[101] NTCA argues that we should permit indexing of the rates of incentive plan carriers to those of price cap carriers, while MCI argues that we limit new prices to the tariffed industry average.[102] SBA asserts that the Commission must specify how a LEC should determine the LEC geographically closest so that carriers can avoid unnecessary costs associated with tariff investigations or complaints.[103] NTCA also argues that the closest price cap carrier may have little in common with the affected LEC, so that rates of one may not be applicable to the other.[104]

75. With respect to how new services are subsequently treated, USTA argues that the Commission should not require a burdensome cost-based filing within 12 months if the LEC continues to meet the de minimis revenue standard. It also contends that cost-based pricing of a new service could actually cause rates to increase and produce rate churn.[105] MCI agrees with the proposal that LECs

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98 NPRM, 7 FCC Rcd at 5026.

99 See e.g., Lincoln Comments at 6-7; Centel Comments at 8; ICC Reply at 6-7.

100 USTA Comments at 20.

101 Id.; see also PRTC Comments at 8; ALLTEL Comments at 6; Taconic Comments at 7; JSI Comments at 6-7; ITAG Comments at 7.

102 NTCA Comments at 10-11; MCI Reply at 12-13.

103 SBA Comments at 18.

104 NTCA Comments at 10-11. See also GVNW Comments at 3 (NECA rates are a better surrogate).

105 USTA Comments at 19. Accord Taconic Comments at 7; ICC Reply at 7.

should make a cost-based filing after 12 months of operating experience.[106] MCI argues that the de minimis provision was proposed because conducting a cost of service study on a new service is difficult and the results may not be very reliable, given that there may be no direct information on costs. According to MCI, resetting the rates based on actual costs after one year, when better data are available, is most consistent with avoiding inaccurate and inefficient pricing signals in the market.[107]

76. Discussion. The purpose behind our new services proposal is to provide an administratively simple means of permitting small and mid-size LECs to introduce new services and compete with neighboring price cap LECs for customers. For purposes of the incentive plan and the Section 61.39 rules, the new service test of price cap shall apply. In this Order, we seek to provide small and mid-size LECs with the ability to introduce new services quickly, as well as to stimulate rivalry among LECs for new, innovative service offerings. This process also furthers our policy that innovative new services should be made available to the public as quickly as possible.[108]

77. Given these goals and the record support for them, we modify the new services criteria as follows. Except in cases in which the Commission specifically establishes requirements for a new service,[109] carriers electing the optional incentive plan may introduce any new service on a streamlined basis, regardless of the size of potential revenues, so long as the price of the new service is at or below that of any neighboring price cap LEC. A new service that is not like a neighboring price cap LEC's service is not eligible for streamlined review, and must be cost supported using prospective data, as required by Section 61.38 of the Commission's rules. For services which are like a neighboring price cap LEC's services, streamlining shall mean the transmittal introducing the new service shall be presumed lawful, that no cost support is required, and that the transmittal can be filed on 14 days' notice. In place of cost support, the carrier shall attach a brief explanation of why the service is like an existing service offered by the closest price cap LEC, and an explanation or statements that the price is no higher than the price charged by the other LEC.[110]

78. We find that this structure is simple and should generally avoid unreasonable rates. For practical purposes, the upper limit on new service

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106 MCI Reply at 10.

107 Id. at 10-12.

108 See Section 7 of the Communications Act, 47 U.S.C. § 157.

109 E.g., Bell Operating Companies' Tariffs for the 800 Service Management System, Tariff F.C.C. No. 1 and 800 Data Base Access Tariffs, DA 93-491, (released Apr. 28, 1993).

110 The presumption of lawfulness could be overcome with a showing that the rate filed is greater than the nearest price cap LEC's rate, or a persuasive argument that the service is not "like."

prices is likely to be the price charged by a neighboring LEC.[111] The lower limit on pricing is only a concern to the extent that a carrier might seek to set predatory prices. At this time, given the nascent state of competition for interstate access, and the small and mid-sized LECs' limited size, the potential for predatory pricing is extremely remote for the group of smaller carriers eligible for the optional incentive plan. Carriers have no incentive to price at a predatory level.[112] In addition, we impose no revenue limit specific to new services. Revenue from new services would factor into the LECs overall earnings and be subject to the same earnings limits as other services. Given that there is an adequate check on the reasonableness of new service pricing for price cap LECs, we perceive no utility in making the new services provision more complex by imposing requirements such as a de minimis showing or 12-month cost showings. The costs and demand levels associated with new services will simply be folded into the biennial cost-based tariff review process.[113] In the event anticompetitive behavior does occur, the injured party may provide evidence sufficient to overcome the presumption of reasonableness or raise the matter in a complaint.

79. We disagree with commenters that determining which price cap LEC is closest is a difficult question. In most cases, the service area of the optional incentive plan LEC seeking to make a competitive response will border the service area of the price cap LEC, or be associated with a Bell Operating Company or General Telephone Operating Company LATA. If the optional incentive plan LEC's service areas abut more than one price cap LEC, the cap becomes the highest rate charged by any adjoining price cap LEC. Therefore, there should be no ambiguity in determining which price becomes the cap for purposes of streamlined new services filings.

G. Infrastructure and Service Quality Reporting

80. Notice. The NPRM proposes that incentive plan carriers file quarterly service quality reports and biennial infrastructure reports. The NPRM tentatively concludes that these reports are necessary to protect ratepayers and otherwise allay concerns that a company may simply pursue the most cost

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[111] It is, of course, possible that a low cost small or mid-sized company could border the territory of a high cost price cap LEC, rendering the new services cap unreasonable. In such a situation, should a optional incentive plan carrier elect to price at the maximum allowed, the complaint process is available to customers to obtain corrective action.

[112] See LEC Price Cap Order at 6824.

[113] This case is distinguishable from the concerns raised with respect to AT&T's Tariff 15. In Tariff 15, matching rates were found to be anticompetitive. With small carriers matching rates of the largest LECs, competition, because the small carriers lack market power, competition is enhanced by the addition of a second provider of a service.

effective means of maintaining its network to the detriment of service quality, and ultimately to the detriment of the company's infrastructure.[114]

81. Comments. According to USTA, LECs have a strong incentive to maintain a high level of service quality, and a strong financial disincentive to jeopardize customer relations by allowing service quality and network plant to deteriorate.[115] In view of the differences between optional incentive regulation and price cap regulation, the incentive plan does not require the same service quality reporting as price caps, USTA contends. For these reasons, USTA proposes that carriers electing optional incentive regulation should file reports similar, but not identical to the reports of price cap LECs. Further, USTA asserts that these reports should be filed on an annual, rather than a quarterly basis.[116] USTA proposes that the service quality reports include:

a. installation interval reports, reflecting the percentage of service installations completed within carrier established intervals;
b. repair interval reports, reflecting the average total number of hours to complete requested repairs;
c. network blockage reports, reflecting the ratio of blocked call attempts to total attempts at the busy hour; and,
d. switch downtime reports, reflecting the amount of time during the reporting period that a switch is totally down.[117]

82. USTA also argues that the Commission should not adopt new and burdensome infrastructure reporting requirements for LECS under the optional incentive regulation plan.[118] USTA states that in the price cap proceeding the Commission stated that it was less concerned with collecting infrastructure data from smaller price cap LECs, because "infrastructure monitoring of the largest eight LECS will provide a good indication of the general state of the infrastructure nationwide."[119] USTA contends that to avoid placing unnecessary burdens on these carriers, and to ensure the widest participation in the incentive plan, the Commission should not adopt new infrastructure reporting requirements.[120]

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114 NPRM, 7 FCC Rcd at 5026-27.

115 USTA Comments at 22.

116 Id. at 23; accord MCI Reply at 13; ALLTEL Comments at 6; Lincoln Comments at 8; JSI Comments at 8-9; GVNW Comments at 4; ITAG Comments at 7; SBA Comments at 13; see also NTCA Comments at 7-8 (discussing service quality of small carriers). But see Centel Comments at 9 (objecting to any service quality or infrastructure monitoring).

117 USTA Comments at 23-24.

118 USTA Reply at 13.

119 Id. at 14, citing LEC Price Cap Order, 5 FCC Rcd at n. 479.

120 Id. at 14-15.

83. Discussion. In the NPRM we sought a balance between our need to monitor infrastructure maintenance and developments, as well as service quality, of carriers participating in any type of incentive regulation and our desire to avoid the imposition of additional regulatory and administrative burden. We believe that the service quality reporting requirements proposed in the NPRM may be reduced, without diminishing the value of the information to the Commission. At the same time, we would be substantially reducing the reporting burden from that proposed in the NPRM. Therefore we will require incentive plan carriers to file the information required on the price cap FCC Form 43-05 service quality reports, on an annual basis.

84. With respect to infrastructure reports, we believe that annual infrastructure reports are preferable to the biennial infrastructure reports proposed in the NPRM. We believe this incentive plan will encourage companies to modernize their networks, resulting in greater efficiency, yielding lower costs and increased demand. In addition, the plan should prompt companies to modernize their networks. Thus, we conclude that it is in the public interest to monitor infrastructure developments annually. We further believe that the requirement of annual reports is not burdensome even for the smaller carriers. Therefore, incentive plan carriers will be required to file our Form 43-07 infrastructure reports each year in the same manner as price cap LECs.

H. Mergers and Acquisitions Under the Incentive Plan

85. Notice. The NPRM proposes that optional incentive plan carriers acquiring small, non-incentive plan carriers, would be required to convert the acquired companies to the incentive plan, unless the acquired company is an average schedule company. If the acquired company is an average schedule company, conversion to the incentive plan is optional. The NPRM also proposes that a non-incentive plan carrier acquiring an incentive plan carrier would be required to convert to the incentive plan.[121] This proposal tracks requirements in the price cap plan.

86. Comments. ALLTEL argues that the acquisition by an incentive plan carrier of a non-incentive plan carrier or the purchase by a non-incentive plan carrier of an incentive plan carrier, should not trigger any requirement to convert either carrier to a different plan. ALLTEL argues that each company should determine its regulatory methodology based on its unique characteristics.[122] JSI asserts that Section 61.39 and baseline regulated LECs should not be required to convert to the incentive plan if they acquire exchanges from an existing incentive plan LEC.[123] NTCA urges the adoption of a similar rule to that adopted in CC Docket No. 89-2, permitting LECS to retain their pre-transaction pooling status after mergers or acquisitions. NTCA states that those rules require

121 NPRM, 7 FCC Rcd at 5030, 5033.

122 ALLTEL Comments at 9-10.

123 JSI Comments at 14-15.

pooling status waivers only where carriers, as the result of an acquisition or merger, would be returning more than 50,000 access lines to pooling status.[124]

87. Discussion. We adopt the NPRM's proposed rules addressing mergers and acquisitions involving a carrier subject to incentive regulation. As a point of clarification, if an acquiring company participates in the incentive plan for traffic sensitive rates only, the acquired properties would be converted to the incentive plan for traffic sensitive rates only as well.[125]

88. As NTCA states, in CC Docket No. 89-2, we adopted a rule under which LECs involved in mergers and acquisitions are permitted to retain their pre-transaction pooling status.[126] That rule was adopted in an effort to keep pooling rules neutral with regard to mergers and acquisitions. NTCA urges adoption of a similar rule with regard to acquisitions involving incentive plan carriers. We find that the reasoning for the price cap acquisitions rule is more pertinent to the incentive plan than the pooling rule.[127] The incentives and limitations facing a company that has both incentive plan and non-incentive plan affiliates would be very different from those facing a company that has both pooled and non-pooled affiliates. Companies that are allowed to retain both pooled and non-pooled affiliates under the limited exception authorized in the rules adopted in Docket 89-2 are all subject to non-incentive regulation. Thus, there is little incentive to shift costs between pooled and non-pooled affiliates, since all such companies' earnings are subject to the same earnings limits. By contrast, a company with both incentive plan and non-incentive plan affiliates has a significant incentive to shift costs from its incentive plan affiliates to its non-incentive affiliates, since the total dollars these latter companies will earn will be increased as their rate bases increase and they are not restricted to their actual historical costs. This difference justifies requiring the conversion rules described in the NPRM. As with the price cap rules, we will consider granting waiver petitions, on a case-by-case basis, for good cause shown to the mergers and acquisitions rules we herein adopt.

IV. Historical Cost Tariffs for Small Companies (Section 61.39)

89. Section 61.39 permits small telephone companies to file tariffs for their traffic sensitive rates every two years in lieu of participating in the NECA traffic sensitive pool. The rates are developed from the company's actual historical costs, or historical average schedule settlements. Eligibility is limited to LECs serving 50,000 or fewer access lines, realizing total annual

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124 NTCA Comments at 15-16; see also USTA Reply at 21-22; NECA Reply at 11-12.

125 SBA's suggestion, that we permit baseline carriers to merge without FCC approval, is beyond the scope of this proceeding.

126 Amendment of Part 69 of the Commission's Rules Relating to the Common Line Pool Status of Local Exchange carriers Involved in Mergers or Acquisitions, CC Docket No. 89-2, 5 FCC Rcd 231 (1989).

127 See LEC Price Cap Order at 6821.

revenues of $40 million or less. In 1991, 39 small companies filed, on a non-pooled basis, traffic sensitive rates under Section 61.39. In this section of this Order we add an additional regulatory option for some small companies by expanding these rules to provide for similar regulatory treatment of common line rates.

A. Expansion to Common Line

90. Notice. The NPRM proposed extending existing Section 61.39 rules to include common line tariffs. Common line rates would be based on historical costs (or the most recent average schedule settlements) and apply historical demand growth. Cost support would not be filed with the transmittal, except, cost support for SLC calculations. The NPRM tentatively applies the same common line formula for Section 61.39 carriers as is used for optional incentive plan carriers. Commission staff and LEC customers would be eligible to make reasonable requests for cost support data. Eligible companies could file either traffic sensitive rates or traffic sensitive and common line rates under Section 61.39.[128]

91. Comments. The LEC industry generally supports the Commission's proposal to extend the Section 61.39 filing option to include common line rates.[129] Taconic states that its participation in Section 61.39 regulation for its traffic sensitive rates has been a positive experience for the company and beneficial to its customers.[130] NTCA states that the current traffic sensitive option has not threatened pooling arrangements or the use of average schedules and, therefore, extending the option also should not introduce any substantial public interest detriments.[131]

92. With respect to the treatment of common line, USTA urges that we adopt a carrier common line demand adjustment formula identical to the formula it proposes for the optional incentive plan.[132] Similarly, ITAG offers a slightly different formula intended to split the benefits of demand growth between LECs and their interstate customers.[133] JSI asks that LECs be permitted to file end user rates under Section 61.39, but remain in the common line and traffic

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128 NPRM, 7 FCC Rcd at 5028.

129 USTA Comments at 35. See also Taconic Comments at 3; GVNW Comments at 5 (arguing that the LEC should retain the option of returning to NECA pools on an annual basis).

130 Taconic Comments at 3.

131 NTCA Comments at 11.

132 USTA Comments at 36. See also GVNW Comments at 5.

133 ITAG Comments at 8-10. ITAG's proposal requires that we select both an inflation adjustment and a productivity offset factor, similar to our price cap plan. However, ITAG argues that the price cap values established for the productivity offset factor are too high to apply in this context.

sensitive pools.[134] JSI asserts that the option of filing end user access charges while remaining in the common line pool exists today; however, such rates must comply with Section 61.38.[135]

93. Commenters also raise various other issues. Taconic urges that we apply the new services rules for incentive plan regulation to carriers filing under Section 61.39. Taconic argues that the new service rules should be modified to permit a Section 61.39 carrier to match the rate of any price cap LEC in the country. In addition, Taconic argues that having to perform subsequent historical cost studies to validate pricing for new services that only generate de minimis revenues would be overly burdensome and inefficient.[136] JSI asserts that the Commission should expand Section 61.39 to permit new service offerings to be treated as prima facie lawful and filed on 14 days' notice, subject to the two percent de minimis rule proposed for the incentive plan.[137] USTA asks that the Commission clarify that a reasonable request by an interexchange carrier to review a Section 61.39 carrier's cost support data must be made during the applicable tariff review period.[138] Taconic asks that the Commission permit carriers the flexibility to return to either or both NECA pools since the impact of competition, state-mandated rulings, and technological changes standards are unforeseeable and substantially increase risks to smaller carriers.[139]

94. Discussion. Commenting parties argue that the application of Section 61.39 to traffic sensitive rates has been a success. Our own review of the rates filed pursuant to Section 61.39 in comparison with those rate filed by NECA and other carriers using traditional rate of return principles demonstrates the success of these rules. As we stated in the NPRM, Section 61.39 rates have been consistently lower than NECA rates for traffic sensitive rate elements. We also find that the rates filed by companies using Section 61.39 have been compensatory. We therefore expand Section 61.39 to include common line rate elements.

95. We adopt the treatment of subscriber line charges as proposed in the NPRM. We also adopt the same demand growth adjustment formula as for the optional incentive plan discussed in Section III, D, 3 above. Like the optional incentive plan, these small company rules present a two-year tariff period, based on historical costs, and the concept of a regulatory lag. We also include the same streamlined new services approach. Commenters have offered no compelling reason to provide a demand growth formula different from that of the optional incentive

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134 JSI Comments at 11.

135 Id. at n. 19.

136 Taconic Comments at 5-6 (requesting that common line mid-course filings be evaluated on a case-by-case basis).

137 JSI Comments at 11-13.

138 USTA Comments at 37.

139 Taconic Comments at 4.

plan. We believe this formula strikes the best balance between simplicity of administration and fairness to companies and customers. As requested by Taconic, mid-course corrections will be evaluated on a case-by-case basis; and, NECA is directed to file terms and conditions for the common line tariffs under Section 61.39. We will consider carriers' petitions for waiver of applicable rules to permit them to return to NECA pools using the same principles we have in the past.

96. In addition, we also adopt the new services rules applicable to the incentive plan for Section 61.39 carriers. Our commitment to the expeditious deployment of new services is equally strong for the smallest carriers as for the larger LECs, and we believe that the lower regulatory burdens and optional regulatory flexibility are necessary to ensure the smallest LECs have an opportunity to make a competitive response to other new service offerings.[140] We decline to adopt modifications suggested by the parties for the same reasons we refused to adopt them for the incentive plan carriers.

V. Baseline Rate of Return Regulation (Section 61.38 and Part 69)

97. Current rules generally require carriers subject to rate of return regulation, including NECA filing on behalf of carriers participating in either the common line or traffic sensitive pools, to file tariffs with the Commission every year.[141] Supporting information required with annual tariff filings includes: a cost of service study for the previous year; a study of projected costs for the tariff period; and estimates of the effect of proposed tariff changes on traffic and revenues.[142] The specific data formats for the supporting information are detailed in a Tariff Review Plan (TRP), which is released by the Common Carrier Bureau each year.[143] The level of cost, demand, and revenue data required by the TRP varies, with greater detail demanded of the larger carriers. The TRP divides companies into three groups -- Tier 1, Tier 2A, and Tier 2B -- for purposes of establishing different levels of cost support data that must be filed as well as reflecting different regulatory requirements applicable to different classes of carriers.[144] The NPRM and this Order refer to these existing rate of return requirements as the "baseline" requirements for rate of

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140 As a point of clarification, we point out that LECs filing tariffs pursuant to Section 61.39 may lower rates below those derived from historical costs as long as the rates can be shown to be cost-based.

141 47 C.F.R. § 69.3. As discussed above, current rules provide that small companies, serving 50,000 access lines or fewer, that qualify as NECA subset 3 carriers (annual operating revenues of $40 million or less), may opt to file traffic sensitive rates every other year. 47 C.F.R. § 69.3(f).

142 47 C.F.R. § 61.38(b).

143 See, e.g., Commission Requirements for Cost Support Material To Be Filed with 1992 Annual Access Tariffs, 7 FCC Rcd 1477 (1992) (TRP Order).

144 Id. at 1478.

return carriers. Pursuant to this Order, baseline regulation is applicable to NECA and individual companies or groups of companies that choose not to participate in the NECA pools and choose not to elect one of the other two alternative regulatory options. The rules and level of detail carriers are required to file in annual tariff filings will be substantially the same as those that were applied to all LECs prior to the implementation of price caps.[145]

98. While we believe it is important to offer small and mid-size LECs the opportunity to continue to file rates pursuant to existing rate of return regulation, due in large measure to the diversity of this group, we believe some simplification can be introduced that will not substantially alter the <u>status quo</u>, particularly for those carriers that participate in the NECA pools. Therefore, we amend our rules to require baseline tariff filings every two years, except for NECA. This action does not prevent a carrier from filing more frequently, but merely provides the opportunity to file tariffs less frequently if the carrier chooses. We continue to require NECA to file annual tariffs for the reasons stated below.

A. Frequency of tariff filings

99. <u>Notice</u>. The NPRM proposed that carriers filing tariffs under Section 61.38 may file only every two years.

100. <u>Comments</u>. USTA supports the biennial tariff filing proposal as long as baseline carriers retain the option of filing more frequently. USTA asserts that the ability to make mid-course adjustments when appropriate must be retained.[146] The SBA concurs with the Commission's finding that biennial filings will not impede our statutory mission.[147] AT&T also states that annual filings are not necessary for the small LECs remaining under baseline regulation, and that biennial filings will reduce administrative costs for both the Commission and all other interested parties.[148]

101. NECA asserts that it must have the ability to file annual tariff filings.[149] Supporting its contention that biennial filings would be inequitable, NECA states that based on its current view of 1990-1991 cost and

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[145] This level of detail was deemed necessary for the Commission to review adequately tariff proposals of the largest carriers, when all LECs were subject to the same form of regulation and all participated in the common line pool administered by NECA. As already noted, approximately 94 percent of the LEC industry (access lines, revenues and minutes of use) is now subject to price cap regulation and all pooling is optional.

[146] USTA Comments at 34. <u>See also</u> ALLTEL Comments at 8; Lincoln Comments at 8.

[147] SBA Comments at 19.

[148] AT&T Comments at 9.

[149] NECA Comments at 3.

demand, if NECA had used 1989 as the base year, it would have experienced a revenue shortfall of $31 million and pool earnings approximately 125 basis points below authorized (10.01 percent) would have resulted.[150] NECA adds that the Commission has no statutory obligation to prescribe tariff intervals, and in doing so, may well cause carriers to underearn.[151]

102. Discussion. The purpose underlying our proposal to require baseline tariff filings every two years instead of annually was that biennial filings would still permit us to meet our statutory obligations to assure that rates are reasonable while substantially reducing administrative burdens on companies. At the same time, we would not be precluding a carrier subject to baseline regulation from filing more frequently. Because biennial filings are considered an option, annual filings made by baseline carriers would not be considered mid-course filings. Therefore, we adopt biennial filing requirements for baseline carriers, except for NECA. Because NECA administers pools for a large number of small carriers, projecting costs and demand for greater than one-year periods is difficult. We believe, at this time, requiring NECA to file information projecting data for two years would be unnecessarily complex. Therefore, NECA will continue to be required to file tariffs annually.

B. Historical Versus Prospective Costs

103. Notice. The NPRM suggested that simple extrapolations of historical costs would be less burdensome than the type of projections now used.

104. Comments. NECA argues that it must retain the ability to base rates on prospective costs.[152] NECA does agree that the use of historical data and trends to determine what prospective costs and demand will be is important. NECA disagrees, however, that historical data should be required as the sole basis for establishing compensatory prospective rates. NECA argues that an important component of ratemaking is consideration of current factors such as technological advances and FCC rule changes.[153] NECA also asserts that a shift to historical costs requires complex rule changes, which are beyond the scope of this

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[150] NECA notes that, if a purely historical approach had been substituted for a prospective methodology, it would have experienced an earnings shortfall of $29 million. NECA states that it has performed additional analysis on the data underlying its currently effective rates, using various models for trending historical data to produce test period revenue requirements and demand. NECA states that each analysis based on historical data demonstrated that it would have experienced significant revenue shortfalls and underearnings with the biennial filing requirement. NECA Comments at n. 14.

[151] NECA Reply at 6-7.

[152] NECA Comments at 5-9.

[153] NECA Reply at 5 (also arguing that the administrative savings of a purely historical approach have not been calculated based on existing tariff filing requirements).

docket.[154] USTA also argues that reliance on historical costs and/or simple extrapolations will not permit baseline LECs and NECA to fully account for future cost-intensive events, such as conversion to SS7 and 800 database implementation, state infrastructure requirements, and changes to the North American numbering plan.[155] USTA further argues that use of historical costs and demand under baseline regulation might bias long-term earnings results to the detriment of rate-of-return carriers.[156] Other carriers argue strongly that use of an historical-only cost support approach should be optional.[157]

105. AT&T and MCI support the Commission's proposal that small and mid-size rate-of-return LECs file projected costs and demand data "developed as simple extrapolations of historical costs and demand."[158] AT&T asserts that historical data are ascertainable and verifiable, and basing projections on extrapolations of historical trends is a straightforward and consistent forecasting methodology. AT&T states that this method would reduce filing burdens of companies and simplify the overall tariff filing process.[159]

106. Discussion. Based on the record before us, we are not prepared at this time to introduce substantial reform into the baseline process. Most comments addressing baseline reform came from small LECs opposing reform. No sufficient record was established refuting this opposition or supporting any clear direction for baseline reform. Further, such reform would radically alter the optional nature of other regulatory programs established in this proceeding. Finally, a number of proceedings remain open which, to varying degrees, address fundamental aspects of baseline regulation. For example, the Commission recently adopted a Notice of Proposed Rulemaking to establish safeguards to improve the administration of the interstate access tariff and revenue distribution processes.[160] In addition, NECA's most recent revision to its Universal Service

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154 NECA Comments at 6-9 (citing the annual certification of average schedule carriers and the pool notification rules as two rules that would have to be changed).

155 USTA Comments at 31-32 (arguing that the Commission should focus instead on simplifying its tariff review plan requirements). See also NECA Comments at 6-9.

156 USTA Comments at 32-35 (arguing that a LEC under baseline regulation should be permitted to earn up to 100 basis points above the authorized rate of return before its rates are considered to be unreasonable).

157 ALLTEL Comments at 8; Lincoln Comments at 9; JSI Comments at 13-14; SBA Comments at 21.

158 AT&T Comments at 9; MCI Reply at 13.

159 Id.

160 Safeguards to Improve the Administration of the Interstate Access Tariff and Revenue Distribution Processes, CC Docket no. 93-6, RM 7736, released February 11, 1993.

Fund rates are under investigation.[161] While these other proceedings are pending, NECA has not been forthcoming with workable proposals for reform and has argued strongly against those proffered in the NPRM. We believe that a greater reliance on historical costs remains a worthy objective and should be a basis of future discussions.[162]

C. Treatment of New Services and Pricing Flexibility

107. Notice. The NPRM proposed streamlined treatment for new services similar to that proposed for the optional incentive regulation plan.[163] The NPRM did not propose to give baseline rate of return carriers added pricing flexibility.

108. Comments. NECA contends that because it is difficult for small companies and NECA to develop new service rates under the current rules in a timely manner, efforts to simplify the introduction of new services would benefit NECA companies. NECA argues that the streamlined procedures for new services should include a presumption of lawfulness for new services projecting revenues of less than 2 percent of the combined common line and traffic sensitive pools' total interstate access revenue requirement. NECA also asks that the Commission authorize NECA to set its pool rates for new services at a level not to exceed the highest filed price cap carrier rate in the country.[164] Asserting that small and mid-size company rates are typically much higher than those of price cap carriers, NECA asks that the Commission also permit NECA the option of filing new service rates based on a ratio of price cap element to subelement rates, as long as the rate meets the de minimis level of revenues standard.[165]

109. MCI maintains that the rates for a new service should be determined using total service long run incremental cost prospective forecasting.[166] According

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161 National Exchange Carrier Association, FCC Tariff No. 5, Transmittal No. 518.

162 While simplification of our tariff review plan is a goal we share with the industry, the recommendations made by USTA and NECA are beyond the scope of this proceeding. See NECA Comments at 8-9 (recommending elimination of most TRP reports); see also USTA Comments at 30-31.

163 NPRM, 7 FCC Rcd at 5029-30.

164 NECA Comments at 9-10. See also NTCA Comments at 12; Lincoln Comments at 9; JSI Comments at 13; but see SBA Comments at 23 (allow new service rates to be based on a like service of any similarly-situated carrier, regardless of the type of regulation used to file the rate being used); NECA Reply at 9-10 (presenting a national average ratio approach comparing average price cap rates to subelement rates as the test of whether a new service should be streamlined).

165 See NTCA Comments at 3 (arguing for more fundamental deregulation of small companies).

166 MCI notes: In the Matter of transport Rate Structure and pricing, CC Docket No. 91-213, Comments of MCI Telecommunications, November 22, 1991, p. 18.

to MCI, a rate of return LEC must not be given a choice of alternative methods by which to calculate different rates it charges.[167]

110. With respect to pricing flexibility, NECA proposes that traditional rate of return carriers should be permitted the option to change rates by 5 percent up or down during the tariff period.[168] NECA proposes that these filings should be made on 14 days' notice with a presumption of lawfulness provided that a showing of revenue neutrality on a prospective basis is included in the filing. NECA also recommends that rate relationships established through the use of this pricing flexibility should be permitted to continue into subsequent tariff periods. Under this NECA proposal, the option could be exercised if it results in no cumulative revenue impact based on prospective test period demand as measured within either the traffic sensitive-switched or traffic sensitive-special access rate groupings. NECA notes that it is not proposing pricing flexibility for common line or end user rate elements. NTCA asserts that the pricing flexibility components of the optional incentive regulation plan should be extended to the rest of the non-price cap industry.

111. The ICC argues that the NECA and OPASTCO proposals appear to provide artificial incentives to encourage additional pooling. According to ICC, LECs that wish greater flexibility in pricing must be willing to bear some risk by ensuring ratepayers that they will become more efficient. Bearing greater risk demands exiting the NECA pools.[169]

112. Discussion. We concluded above that, with the exception of permitting baseline companies other than NECA to have the option of filing tariffs on a biennial basis, justified by cost and demand support, baseline regulation will remain unchanged. Therefore, no additional risk is being imposed on baseline regulated carriers. Accordingly, it is inappropriate to provide any reward as might be afforded by streamlined treatment of new services or broader earnings bands. In addition, the parties have not justified pricing flexibility at this time, particularly for carriers participating in pools. Companies seeking such flexibility can elect one of the other options we are establishing in this Order.[170]

D. Incentive Regulation and Regulatory Reform within NECA

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[167] MCI Comments at 13-14.

[168] NECA Comments at 13-14.

[169] ICC Reply at 7-8.

[170] Some commenters have suggested we increase the buffer zone around baseline carriers earnings to 100 basis points. Centel Comments at 11; NECA Reply at 10. But see MCI Reply at 18. This issue is beyond the scope of this proceeding and is more appropriately raised in CC Docket No. 92-133.

113. Notice. The NPRM sought comment on means of permitting incentive options within the NECA pools.[171]

114. Comments. NECA, although not proposing any specific incentive-based options here, proposes a rule revision which would enable the implementation of incentive options within the pool in the future through NECA filing a tariff.[172] NTCA agrees that NECA should be afforded maximum flexibility to design a plan to introduce incentives to become more efficient to the pools.[173]

115. NTCA and NECA assert that more telephone companies should be permitted to receive settlements based on interstate average schedules.[174] However, the ICC opposes greater participation in average schedule costing methodologies. The ICC argues that movement away from the pooling process is the more appropriate form of regulation.[175]

116. Discussion. We are not adopting NECA's proposal to permit it to introduce incentive regulation into the pool settlement process by filing a tariff. Important changes in regulatory mechanisms are more properly evaluated in a notice and comment proceeding. However, we encourage NECA to continue to work on reforms to introduce optional incentive plans into the pooling process, which would be considered in the context of a separate proceeding, a waiver petition or a rulemaking.[176] We also find requests to permit cost companies to convert to average schedule status to be beyond the scope of this proceeding.

VI. Implementation Schedule

117. We will schedule implementation of these rules for an effective date of January 1, 1994. We anticipate that the Common Carrier Bureau can implement appropriate mechanisms to meet this schedule, including revisions to the annual Tariff Review Plan.

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171 NPRM, 7 FCC Rcd at 5030.

172 NECA Comments at 16. See also ALLTEL Comments at 10; GVNW Comments at 6; NTCA Reply at 9-10.

173 NECA also proposes Part 69 rule changes to reflect the settlement methods in place since 1984 and to remove the inaccurate references to computing hypothetical net balances. NECA states that existing sections 69.608 through 69.610 have never been used for settlement purposes. NECA Comments at 20-21. See also NTCA Comments at 13-14. These issues are beyond the scope of this docket.

174 NTCA Comments at 14; NECA Comments at 16-20; see also USTA Reply at 20-21; JSI Reply at 2-3; NTCA Reply at 10-11.

175 ICC Reply at 8.

176 Similarly, MCI's suggestion that we consider Universal Service Fund reform is beyond the scope of this docket. See MCI Comments at 2-3.

VII. Regulatory Flexibility Analysis and Paperwork Reduction

118. Notice. The NPRM concludes that the Regulatory Flexibility Act is not applicable to this proceeding based upon the Commission's prior findings that all LECs are dominant.[177]

119. Comments. The SBA asserts that the Commission's position represents a constricted view of the Regulatory Flexibility Act; the SBA gives a broader interpretation to the Act. SBA contends that the Regulatory Flexibility Act also permits an agency for purposes of complying with the Act to select a different definition of small business after consultation with the Office of Advocacy of the SBA. Nothing in the Act, according to SBA, requires an agency to adopt the definition of a "small entity" provided in Section 3 of the Small Business Act to carry out its statutory mandate. The SBA interprets the Act to give the FCC sufficient discretion to adopt one size standard for regulatory purposes and another for compliance with the analytical requirements of the Act. Therefore, SBA asserts, the Commission can analyze the impact of these rules while maintaining its distinction between dominant and non-dominant common carriers.[178] SBA continues, that even if the Commission asserts that such dual standards are unworkable, SBA disagrees with the conclusion that small LECs are dominant. SBA states that the Commission argues that small LECs are monopoly providers of telecommunication services and by definition dominant; yet, the Commission scatters throughout the NPRM references to the competition faced by smaller LECs. The SBA states that Commission precedent exists for disparate regulatory treatment of different portion of an individual carrier's service.[179]

120. Discussion. We certify that the Regulatory Flexibility Act[180] is not applicable to the rule changes we adopt in this proceeding. Thus, this Commission is not required by the terms of that Act to apply the formal procedures set forth therein. Accordingly, we reject the assertions of SBA to the contrary.

121. As part of our analysis of the regulation adopted in this Memorandum Opinion and Order, however, this Commission has considered the impact of the proposal on small telephone companies, i.e., those serving 50,000 or fewer access lines. As a result of our decision to make all of the new regulatory regimes optional, no small carrier will be forced to change the method by which it is

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177 NPRM, 7 FCC Rcd at 5031.

178 SBA Comments at 25-26.

179 SBA Comments at 25-27.

180 Because of the nature of local exchange and access service, this Commission has concluded that small telephone companies are dominant in their fields of operation and therefore are not small entities as defined by the Regulatory Flexibility Act. See MTS and WATS Market Structure, 93 FCC 2d 241, 338-39 (1983).

regulated. All support and subsidy mechanisms, such as our High Cost Fund and long term support mechanism, remain in effect. The average schedule status of companies is not challenged. These rules permit greater flexibility and introduce the potential rewards of incentive regulation on an optional basis, while essentially preserving the status quo for companies that do not deem it appropriate to change.

122. Public reporting burden for this collection of service quality and infrastructure reporting information is estimated to average 833 hours per service quality response, and 10 hours per infrastructure response.

VIII. Ordering Clauses

123. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 4(j), 201-205, 303(r), and 403 of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 154(j), 201-205, 303(r), 403, Part 61, Part 65, and Part 69, and Sections 61.38, 61.39, 61.50, 61.58, 65/700, and 69.3, ARE AMENDED as set forth in Appendix B to this Order.

124. IT IS FURTHER ORDERED that this Report and Order will be effective thirty days after publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy

Donna R. Searcy
Secretary

APPENDIX A

COMMENTERS

ALLTEL Service Corporation (ALLTEL)

American Telephone and Telegraph Company (AT&T)

Central Telephone Company (Centel)

Fred Williamson & Associates, Inc. (FW&A)

GVNW, Inc./Management (GVNW)

Illinois Commerce Commission (ICC)

Independent Telephone Access Group (ITAG)

The members of ITAG are: Champaign Telephone Company, Chillicothe Telephone Company, Chouteau Telephone Company, Granite State Telephone Company, Inc., Mashell Telephone Company, Inc., Millry Telephone Company, Inc., Northern Arkansas Telephone Company, Inc., Pigeon Telephone Company, Totah Telephone Company, Waitsfield-Fayston Telephone Company, Inc., and Western New Mexico Telephone Company.

John Staurulakis, Inc. (JSI)

Lincoln Telephone and Telegraph Company (Lincoln)

MCI Telecommunications Corporation (MCI)

National Exchange Carrier Association (NECA)

National Telephone Cooperative Association (NTCA)

National Association of Regulatory Utility Commissioners (NARUC)

Organization for the Protection and Advancement of Small Telephone Companies OPASTCO)

PTI Communications (PTIC)

Puerto Rico Telephone Company (PRTC)

Ronan Telephone Company (Ronan)

Taconic Telephone Corp. (Taconic)

Tallon, Cheeseman and Associates, Inc. (TCA)

U. S. Small Business Administration (SBA)

United States Telephone Association (USTA)

The following filed reply comments in support of Comments filed by GVNW:

Arnold Reinhold, Cambridge Tel. Co., Canby Tel. Assn., Citizens Tel. Co., Concord Tel. Co., Cordova Tel. Co., Dell Tel. Coop., Emery Tel. Co., Farmers Mutual Tel. Co., Home Tel. Co., Manti Tel. Co., McDaniel Tel. Co., Plains Cooperative Tel. Co., Roggen Tel. Coop., Siskiyou Tel. Co., South Central Tel. Co., and Western River Tel. Co.

APPENDIX B

AMENDMENTS TO THE CODE OF FEDERAL REGULATIONS

Title 47 of the CFR, Parts 61, 65, and 69 are amended as follows:

PART 61 -- TARIFFS

1. The authority citation for Part 61 continues to read as follows:

AUTHORITY: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply Sec. 203, 48 Stat. 1070; 47 U.S.C. 203.

2. Section 61.3 is amended by revising paragraph (e) to read as follows:

§ 61.3 Definitions.

* * * * *

(e) Base period. For carriers subject to §§ 61.41-49, the 12-month period ending six months prior to the effective date of annual price cap tariffs, or for carriers regulated under § 61.50, the 24-month period ending six months prior to the effective date of biennial optional incentive plan tariffs.

* * * * *

3. Section 61.38 is amended by revising paragraph (a) to read as follows

§ 61.38 Supporting Information to be submitted with letters of transmittal.

(a) Scope. This Section applies to dominant carriers whose gross annual revenue exceed $500,000 for the most recent 12 month period of operations or are estimated to exceed $500,000 for a representative 12 month period. Local exchange carriers serving 50,000 or fewer access lines in a given study area that are described as subset 3 carriers in § 69.602 of this chapter may submit Access Tariff filings for that study area pursuant to either this section or § 61.39. However, the Commission may require any carrier to submit such information as may be necessary for a review of a tariff filing. This section (other than the preceding sentence of this paragraph) shall not apply to tariff filings proposing rates for services identified in §§ 61.42 (a), (b), (d), (e), and (g), promotional offerings that relate to services subject to price cap regulation, tariff filings proposing rates for services identified in §61.50, or to tariff filings, other than promotional filings, filed on 14 days' notice pursuant to § 61.58(c)(6).

* * * * *

4. Section 61.39 is amended by revising paragraphs (a) and (b), and adding a new paragraphs (c) and (d) to read as follows:

§ 61.39 Optional supporting information to be submitted with letters of transmittal for Access Tariff filings effective on or after April 1, 1989, by local exchange carriers serving 50,000 or fewer access lines in a given study area that are described as subset 3 carriers in Sec. 69.602.

(a) Scope. This Section provides for an optional method of filing for any local exchange carrier that is described as subset 3 carrier in § 69.602, which elects to issue its own Access Tariff for a period commencing on or after April 1, 1989, and which serves 50,000 or fewer access lines in a study area as determined under § 36.611(a)(8) of the Commission's Rules. However, the Commission may require any carrier to submit such information as may be necessary for review of a tariff filing. This section (other than the preceding sentence of this paragraph) shall not apply to tariff filings proposing rates for services identified in § 61.42(d), (e), and (g), which filings are submitted by carriers subject to price cap regulation, or to tariff filings proposing rates for services identified in § 61.50, which filings are submitted by carriers subject to optional incentive regulation.

(b) Explanation and data supporting tariff changes. The material to be submitted for either a tariff change or a new tariff which affects rates or charges must include an explanation of the filing in the transmittal as required by § 61.33. The basis for ratemaking must comply with the following requirements. Except as provided in paragraph (b)(5) of this section, it is not necessary to submit this supporting data at the time of filing. However, the local exchange carrier should be prepared to submit the data promptly upon reasonable request by the Commission or interested parties.

(1) For a tariff change, the local exchange carrier that is a cost schedule carrier must propose Traffic Sensitive rates based on the following:

(i) For the first period, a cost of service study for Traffic Sensitive elements for the most recent 12 month period with related demand for the same period.

(ii) For subsequent filings, a cost of service study for Traffic Sensitive elements for the total period since the local exchange carrier's last annual filing, with related demand for the same period.

(2) For a tariff change, the local exchange company that is an average schedule carrier must propose Traffic Sensitive rates based on the following:

(i) For the first period, the local exchange carrier's most recent annual Traffic Sensitive settlement from the National Exchange Carrier Association pool.

(ii) For subsequent filings, an amount calculated to reflect the Traffic Sensitive average schedule pool settlement the carrier would have received if the carrier had continued to participate, based upon the most recent average schedule formulas developed by the National Exchange Carrier Association.

(3) For a tariff change, the local exchange carrier that is a cost schedule carrier must propose Common Line rates based on the following:

(i) For the first period the Carrier Common Line revenue requirement shall be determined by a cost of service study for the most recent 12 month period. The Carrier Common Line revenue requirement shall be divided by a factor equal to the demand over the preceding 12-month period, multiplied by the ratio of Carrier Common Line minutes of use during the most recent 12-month period over Carrier Common Line minutes of use in the preceding 12-month period.

(ii) For subsequent filings, the Carrier Common Line revenue requirement shall be determined by a cost of service study for the total period since the carrier's last biennial access filing. The Carrier Common Line revenue requirement determined in this manner shall be divided by a factor equal to the demand over the preceding 12-month period, multiplied by the ratio of Carrier Common Line minutes of use during the most recent 12-month period over Carrier Common Line minutes of use in the preceding 12-month period.

(4) For a tariff change, the local exchange carrier which is an average schedule carrier must propose common line rates based on the following:

(i) For the first period, the local exchange carrier's most recent annual Common Line settlement from the National Exchange Carrier Association. This carrier common line settlement amount shall be divided by a factor equal to the demand over the preceding 12-month period, multiplied by the ratio of Carrier Common Line minutes of use during the most recent 12-month period over Carrier Common Line minutes of use in the preceding 12-month period.

(ii) For subsequent filings, an amount calculated to reflect the average schedule pools settlement the carrier would have received if the carrier had continued to participate, based upon the most recent average schedule Common Line formulas developed by the National Exchange Carrier Association. This amount shall be divided by a factor equal to the demand over the preceding 12-month period, multiplied by the ratio of Carrier Common Line minutes of use during the most recent 12-month period over Carrier Common Line minutes of use in the preceding 12-month period.

(5) For End User Common Line charges included in a tariff pursuant to this Section, the local exchange carrier must provide supporting information for the two-year historical period with its letter of transmittal in accordance with §61.38.

* * * * *

(d) Rates for a new service that is the same as that offered by a price cap regulated local exchange carrier providing service in an adjacent serving area are deemed presumptively lawful, if the proposed rates, in the aggregate, are no greater than the rates established by the price cap local exchange carrier. Tariff filings made pursuant to this paragraph must include the following:

(1) A brief explanation of why the service is like an existing service offered by a geographically adjacent price cap regulated local exchange carrier; and

(2) Data to establish compliance with this subsection that, in aggregate,

the proposed rates for the new service are no greater than those in effect for the same or comparable service offered by that same geographically adjacent price cap regulated local exchange carrier. Compliance may be shown through submission of applicable tariff pages of the adjacent carrier; a showing that the serving areas are adjacent; any necessary explanations and work sheets.

(e) Average schedule companies filing pursuant to this Section shall retain their status as average schedule companies.

* * * * *

5. Section 61.45 is amended by revising paragraph (d)(2) to read as follows:

* * * * *

(d) (2) Local exchange carriers specified in § 61.41(a)(2) or (a)(3) shall also make such temporary exogenous cost changes as may be necessary to reduce PCIs to give full effect to any sharing of base period earnings required by the sharing mechanism set forth in the Commission's Second Report and Order in Common Carrier Docket No. 87-313, FCC 90-314, adopted September 19, 1990. Such exogenous cost changes shall include interest, computed at the prescribed rate of return, from the day after the end of the period giving rise to the adjustment, to the midpoint of the period when the adjustment is in effect.

* * * * *

6. Section 61.50 is added to read as follows:

§ 61.50 Scope. Optional incentive regulation for rate of return local exchange carriers.

(a) This section shall apply on an elective basis, to local exchange carriers for either traffic sensitive rates only or for both traffic sensitive and common line rates. Carriers electing the plan for traffic sensitive rates only must participate in the Association common line pool. Affiliation with average schedule companies shall not bar a carrier from electing optional incentive regulation provided the carrier is otherwise eligible.

(b) If a telephone company, or any one of a group of affiliated telephone companies, files an optional incentive regulation tariff in one study area, that telephone company and its affiliates, except its average schedule affiliates, must file incentive plan tariffs in all their study areas.

(c) The following rules apply to telephone companies subject to this section, that become involved in mergers, acquisitions, or similar transactions, except that mergers with, acquisitions by, or other similar transactions with companies subject to price cap regulation, as that term is defined in § 61.3(w), shall be governed by § 61.41(c).

(1) Any telephone company subject to this section that is a party to a merger, acquisition, or similar transaction, shall continue to be subject to

incentive regulation notwithstanding such transaction.

(2) Where a telephone company subject to this section acquires, is acquired by, merged with, or otherwise becomes affiliated with a telephone company that is not subject to this section, the latter telephone company shall become subject to optional incentive plan regulation no later than one year following the effective date of such merger, acquisition, or similar transaction and shall accordingly file optional incentive plan tariffs to be effective no later than that date in accordance with the applicable provisions of this Part 61.

(3) Notwithstanding the provisions of paragraph (c) (2) of this section, when a telephone company subject to optional incentive plan regulation acquires, is acquired by, mergers with, or otherwise becomes affiliated with a telephone company that qualifies as an "average schedule" company, the latter company may retain its "average schedule" status or become subject to optional incentive plan regulations in accordance with § 69.3(i)(3) of this chapter and the requirements referenced in that section.

(d) Local exchange carriers that are subject to this section shall not withdraw from optional incentive regulation until the end of two, two-year tariff periods. If a local exchange carrier withdraws from optional incentive plan regulation, it must file company-specific tariffs under the provisions of § 61.38 for four years before it may again elect to enter incentive plan regulation; such carrier may not participate in the applicable Association tariff during that four years. After the four year period, the carrier may either return to the incentive plan, or remain under § 61.38 regulation.

(e) Each local exchange carrier subject to this section shall establish the baskets of services, including service categories, as identified in § 61.42 (d) and (e).

(f) Each local exchange carrier subject to optional incentive regulation shall exclude from its baskets such services or portions of such services as the Commission has designated or may hereafter designate by order.

(g) New services, other than those within the scope of paragraph (f) of this section, must be included in the affected basket at the first two-year tariff filing following completion of the two-year tariff period in which they are introduced. To the extent that such new services are permitted or required to be included in new or existing service categories within the assigned basket, they shall be so included at the first two-year tariff filing following completion of the two-year tariff period in which they are introduced.

(h)(1) Except as provided in paragraph (c)(4) of this section, in connection with any optional incentive plan tariff filings proposing rate changes, the carrier must calculate an index for each affected basket as determined by the Common Carrier Bureau.

(2) In connection with any tariff filed under this section proposing changes to rates for services in the basket designated in paragraph (e) of this section, the maximum allowable increase in the carrier common line (CCL) charge

shall be limited to ten percent over the two-year tariff period, where the CCL charge shall be computed as the sum of each of the proposed Carrier Common Line rates multiplied by its corresponding historical period Carrier Common Line minutes of use, divided by the sum of all types of base period Carrier Common Line minutes of use.

(i) Rates for a new service that is the same as that offered by a price cap regulated local exchange carrier providing service in an adjacent serving area are deemed presumptively lawful, if the proposed rates, in the aggregate, are no greater than the rate established by the price cap local exchange carrier. Tariff filings made pursuant to this paragraph must include the following:

(1) A brief explanation of why the service is like an existing service offered by a geographically adjacent price cap regulated local exchange carrier; and

(2) Data to establish compliance with this subsection that, in aggregate, the proposed rates for the new service are no greater than those in effect for the same or comparable service offered by that same geographically adjacent price cap regulated local exchange carrier.

(j) The maximum allowable rate of return on earnings based on rates filed by a local exchange carrier subject to this section, shall be determined by adding a fixed increment of one and one-half percent to the carrier's prescribed rate of return. Rates of local exchange carriers subject to this section that result in earnings less than three-quarters percent below the carrier's prescribed rate of return may be retargeted to three-quarters percent below the carrier's prescribed rate of return, in a mid-course tariff filing.

(k) Local exchange carriers filing common line rates under this section must propose Carrier Common Line rates based on the following:

(1) For the first period the Carrier Common Line revenue requirement shall be determined by a cost of service study for the most recent 12 month period. The Carrier Common Line revenue requirement shall be divided by a factor equal to the demand over the preceding 12-month period, multiplied by the ratio of Carrier Common Line minutes of use during the most recent 12-month period over Carrier Common Line minutes of use in the preceding 12-month period.

(2) For subsequent filings, the Carrier Common Line revenue requirement shall be determined by a cost of service study for the total period since the carrier's last biennial access filing. The Carrier Common Line revenue requirement determined in this manner shall be divided by a factor equal to the demand over the preceding 12-month period, multiplied by the ratio of Carrier Common Line minutes of use during the most recent 12-month period over Carrier Common Line minutes of use in the preceding 12-month period.

7. Section 61.58 is amended by adding new paragraph (e) to read as follows:

§ 61.58 Notice requirements.

* * * * *

(e) Carriers subject to optional incentive regulation. This paragraph applies only to carriers subject to Section 61.50 of this Part. Such carriers must file tariffs according to the following notice periods:

(1) For initial and renewal tariff filings whose effective date coincides with the start of any two-year tariff period as defined in § 69.3(f) of this chapter, filings must be made on not less than 90 days' notice.

(2) For rate revisions made pursuant to § 61.50 (g) and (i), and § 61.39(d), tariff filings must be made on not less than 14 days' notice.

PART 65 -- INTERSTATE RATE OF RETURN PRESCRIPTION AND METHODOLOGIES

1. The Authority citation for Part 65 continues to read as follows:

AUTHORITY: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat., 1006, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403, unless otherwise noted.

2. Section 65.700 is amended by adding a new paragraph (d) to read as follows:

§ 65.700 Determining the maximum allowable rate of return.

* * * * *

(d) The maximum allowable rate of return for rates filed by local exchange carrier subject to § 61.50 shall be determined by adding a fixed increment of one and one-half percent to the carriers prescribed rate of return.

PART 69 -- ACCESS CHARGES

1. The Authority citation for Part 69 continues to read as follows:

AUTHORITY: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat, 1066, 1070, 1072, 1077, 1094, as amended 47 U.S.C. §§ 154, 201, 202, 203, 205, 218, 403, unless otherwise noted.

2. Section 69.3 is amended by revising the first sentence of paragraph (a), revising the first sentence of paragraph (e), and paragraph (i) introductory text, paragraph (i)(1), paragraph (i)(3) and adding a new paragraph (j) to read as follows:

§ 69.3 Filing of access service tariffs.

(a) Except as provided in paragraphs (g) and (h) of this section, a tariff for access service shall be filed with this Commission for a two-year period. * * *